

ESTTA Tracking number: **ESTTA597323**

Filing date: **04/08/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91213763
Party	Defendant KSX Enterprise, Inc.
Correspondence Address	FEI PANG LAW OFFICES OF FEI PANG 11 W DEL MAR BLVD STE 200 PASADENA, CA 91105-2505 UNITED STATES fp@panglawyer.com, pangfei74@hotmail.com
Submission	Motion for Default Judgment
Filer's Name	Fei Pang
Filer's e-mail	fp@panglawyer.com, pangfei74@hotmail.com
Signature	/Fei Pang/
Date	04/08/2014
Attachments	Motion for Default Judgment for Failure to file an answer.pdf(612650 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

**In the Matter of Application Serial No. 85/929,488**

**Mark: NEVER XHALE**

**Filed: MAY 12, 2013**

**Published: October 29, 2013**

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INHALE, INC., )

Opposer and Counterclaim Defendant, )

v. ) **OPPOSITION NO: 91213763**

KSX ENTERPRISE, INC., )

Applicant and Counterclaim Plaintiff. )

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**Motion for Default Judgment for Failure of Answer**

Applicant and Counterclaim Plaintiff, KSX ENTERPRISE, INC (“KSX”), applied for registration of KSX’s trademark NEVER XHALE, Serial No. 85/929488 on May 12,

2013(the “Mark”). The Mark was published in the Official Gazette of October 29, 2013.

On November 29, 2013, Opposer Inhale, Inc. filed a Notice of Opposition. On January 2, 2014, Applicant and Counterclaim Plaintiff filed an answer to the opposition and a counterclaim to cancel Opposer’s pleaded registration mark EXHALE (Registration # 4063774).

On January 29<sup>th</sup>, 2014, TTAB issued the office letter to reset the trial dates. (See Exhibit A). On that letter issued by Monique Tyson, Paralegal Specialist, its second paragraph the said letter states as follows:

“Opposer and Counterclaim Defendant, Inhale, Inc., is allowed until **THIRTY DAYS** from the mailing date of this order to file an answer to the Counterclaim. See Trademark Rules 2.106(b)(2)(iii) and 2.121(b)(2).”

Thirty days from January 29<sup>th</sup>, 2014 was March 1<sup>st</sup>, 2014, which had been long passed. As of today, Applicant and Counterclaim Plaintiff did not receive the answer to the Counterclaim. A search at the Trademark Trial and Appeal Board Inquiry System (“TTABVUE”) did not show any answer filed by Opposer and Counterclaim Defendant. (See Exhibit B).

Now therefore, Applicant and Counterclaim Plaintiff humbly request that:

- (1) The Board enters a default judgment against Opposer and Counterclaim Defendant for failure to answer the Counterclaim; and
- (2) Opposer and Counterclaim Defendant’s Mark EXHAL be cancelled; and

(3) Applicant and Counterclaim Plaintiff's Mark NEVER EXHALE be approved for registration

Date: April 8, 2014

Respectfully Submitted,

KSX ENTERPRISE, INC

By: 

Fei Pang

Attorney for Applicant and

Counterclaim Plaintiff

## **CERTIFICATION OF SERVICE**

I certify that a copy of this NOTICE OF MOTION OF DEFAULT JUDGMENT is being served via USPS on this the 8th day of April, 2014, to the following:

### **Opposer and Counterclaim Defendant's Attorney/Representative:**

Louis F. Teran  
SLC Law Group  
1055 E. Colorado Blvd., Suite 500  
Pasadena, CA 91106  
UNITED STATES

### **Opposer and Counterclaim Defendant:**

Inhale, INC.  
8616 Cuyanaca St.  
Santee, CA 92071  
UNITED STATES



*Weihong Liu*

# EXHIBIT A

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

MT

Mailed: January 29, 2014

Opposition No. 91213763

Inhale, Inc.

v.

KSX Enterprise, Inc.

**Monique Tyson, Paralegal Specialist:**

On January 2, 2014, applicant filed an answer to the opposition and a counterclaim to cancel opposer's pleaded registration(s). Applicant filed the proper fee.

Opposer and counterclaim defendant, Inhale, Inc., is allowed until **THIRTY DAYS** from the mailing date of this order to file an answer to the counterclaim. See Trademark Rules 2.106(b)(2)(iii) and 2.121(b)(2).

In accordance with the Trademark Rules of Practice, conferencing, disclosure, discovery and testimony period dates are reset as indicated below. In each instance, a copy of the transcript of testimony, together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Answer to Counterclaim Due	February 28, 2014
Deadline for Discovery Conference	March 30, 2014
Discovery Opens	March 30, 2014
Initial Disclosures Due	April 29, 2014
Expert Disclosures Due	August 27, 2014
Discovery Closes	September 26, 2014
Plaintiff's Pretrial Disclosures	November 10, 2014

30-day testimony period for plaintiff's testimony to close	December 25, 2014
Defendant/Counterclaim Plaintiff's Pretrial Disclosures	January 9, 2015
30-day testimony period for defendant and plaintiff in the counterclaim to close	February 23, 2015
Counterclaim Defendant's and Plaintiff's Rebuttal Disclosures Due	March 10, 2015
30-day testimony period for defendant in the counterclaim and rebuttal testimony for plaintiff to close	April 24, 2015
Counterclaim Plaintiff's Rebuttal Disclosures Due	May 9, 2015
15-day rebuttal period for plaintiff in the counterclaim to close	June 8, 2015
Brief for plaintiff due	August 7, 2015
Brief for defendant and plaintiff in the counterclaim due	September 6, 2015
Brief for defendant in the counterclaim and reply brief, if any, for plaintiff due	October 6, 2015
Reply brief, if any, for plaintiff in the counterclaim due	October 21, 2015

If the parties stipulate to any extension of these dates, the filing should set forth the dates in the format shown in this order. See Trademark Rule 2.121(d).

An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.



## EXHIBIT B



United States Patent and Trademark Office

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## TTABVUE. Trademark Trial and Appeal Board Inquiry System

v1.6

## Opposition

**Number:** 91213763**Status:** Pending**Filing Date:** 11/29/2013**Status Date:** 11/29/2013**General Contact Number:** 571-272-8500**Interlocutory Attorney:** MARY CATHERINE FAINT

## Defendant

**Name:** KSX Enterprise, Inc.**Correspondence:** FEI PANG

LAW OFFICES OF FEI PANG  
 11 W DEL MAR BLVD STE 200  
 PASADENA, CA 91105-2505  
 UNITED STATES  
 fp@panglawyer.com, pangfei74@hotmail.com

**Serial #:** 85929488[Application File](#)**Application Status:** Opposition Pending**Mark:** NEVER XHALE

## Plaintiff

**Name:** Inhale, Inc.**Correspondence:** LOUIS F TERAN

SLC LAW GROUP  
 1055 E COLORADO BLVD, SUITE 500  
 PASADENA, CA 91106  
 UNITED STATES  
 lteran@strategiclegalcounseling.com

**Serial #:** 77737661[Application File](#)**Application Status:** Registered**Mark:** EXHALE**Registration #:** 4063774

## Prosecution History

#	Date	History Text	Due Date
5	01/29/2014	<u>TRIAL DATES RESET</u>	
4	01/02/2014	<u>ANSWER AND COUNTERCLAIM ( FEE)</u>	
3	11/29/2013	PENDING, INSTITUTED	
2	11/29/2013	<u>NOTICE AND TRIAL DATES SENT; ANSWER DUE:</u>	01/08/2014
1	11/29/2013	<u>FILED AND FEE</u>	

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